



## Filing Receipt

**Received - 2021-11-01 11:14:41 AM**  
**Control Number - 52373**  
**ItemNumber - 207**

**PROJECT NO. 52373**

**REVIEW OF WHOLESALE  
ELECTRIC MARKET DESIGN**

**§  
§**

**PUBLIC UTILITY COMMISSION  
OF TEXAS**

**COMMENTS OF OHMCONNECT TEXAS, LLC**

The commission staff's request for comments, dated October 25, 2021, related to market design,<sup>1</sup> center heavily on the efficacy of introducing an LSE Capacity Obligation. OhmConnect Texas, LLC submits these comments in opposition to this proposed addition to the market. Don Whaley, President of OhmConnect Texas will be present and available to discuss his comments and share his experience with the commission on November 4.

It is the stated goal that the LSE Obligation will provide short to mid-term reliability of power supply in the ERCOT region. It is unclear how requiring LSEs to contract with specific generation assets, however, will achieve the desired outcome. Winter storm URI was by all standards an unprecedented event. It is motivating the consideration of equally unprecedented changes to a market that has worked efficiently and allowed competition to flourish for over 20 years. What appears lost in the discussion of an LSE Obligation is that it was the failure of generation assets of all description, and the natural gas system that supplies it, that led to the crisis, not inadequate risk management and hedging practices by LSEs.

The costs and credit requirements associated with the LSE Obligation could prove unsustainable for most competitive retailers and drive many from the market. The resulting impact to the electric consumers of Texas would be equally damaging, as they would have fewer competitive

---

<sup>1</sup> Project No. 52313 - Review of Wholesale Electric Market Design

choices and ultimately be the parties responsible for absorbing the excessive increases in the cost of energy.

Question 5 asks ***“Are there alternatives to an LSE Obligation that could address the concerns raised about the stakeholder proposals submitted to the Commission?”***. We would support a proposal for further ORDC elongation. We would endorse the reduction of the market cap from the current \$9,000 to a more reasonable \$4,500 as previously discussed by the commission. In concert with this reduction, the level at which ORDC adders materially engage should be increased to 4,000 MW of available reserve to allow time for price signals to drive appropriate response from market participants. We would not insist that the cost of the reconfiguration of the curve be price neutral, given that driving additional revenue to reliable resources is likely required to increase system reliability. If ORDC adders are sufficient, and sufficiently frequent, they will drive more load response, one of the few remaining short-term remedies available to the commission. By raising the threshold from 2,000 to 4,000 the market can move away from a crisis management mode to a rational, price-driven operation.

It is important to note that the PUC cannot bring new resources into existence by simply creating an obligation on Retailers. Even the E3 White Paper noted: “However, a solution to procure higher operating reserves only works if there is sufficient “steel in the ground” to actually provide the additional reserves.”<sup>2</sup> While the consultants’ comment was made in reference to the Operating Reserve Requirements option, we see it apply equally to the case of the LSE Capacity Obligation.

The commission’s actions to drive weatherization of thermal generation and coordination with the natural gas system are strong positive first steps toward improving the reliability of the available fleet and were rightly the highest priority. The alteration of the ORDC curve will be another important step. The E3 White Paper itself notes that: “The introduction of the ORDC has

---

<sup>2</sup> The Load Serving Entity Reliability Obligation: A Market Design Reform to Ensure Electric Reliability in Texas, E3 and Beth Garza, September 2021, at page18.

increased the energy price signal and resulted in more capacity than would have otherwise been procured in its absence.”<sup>3</sup> Other changes such as the development of the ECRS and Real-Time Co-optimization, are also going to have long-lasting positive impacts and should remain a priority. It may make sense to remove funding constraints on ERCOT’s acquisition of ERS for this coming winter. These are clear, incremental changes with widespread if not unanimous support. Any more sweeping redesign of the market requires time for much more careful analysis and stakeholder input before adoption.

The proposed LSE Capacity Obligation attempts to shift the responsibility for market reliability to individual retail suppliers, when the logical party to manage the efficient acquisition of needed resources through a market mechanism is ERCOT. Ironically, the E3 plan for LSE Obligation would penalize LSEs for being unable to contract for resources that meet the Commission’s definition of ‘reliable,’ and the penalty funds would be used by ERCOT to procure the resources! Why then, knowing this would be the probable outcome, wouldn’t the commission immediately look to ERCOT to acquire needed resources through the market which has performed well in so many respects?<sup>4</sup> If ERCOT procures the marginal resources required to fulfill the needs identified—to the specifications it sets—then the LSEs will have the needed resources upon which to draw.<sup>5</sup> This order of relationships is a very integral part of the fundamental vision of this market, and what has allowed innovators like OhmConnect to emerge and enter the market. Losing sight of this will destroy that vision, and Texas will be the worse for it.

Equally troubling is the changed role the Commission would have to assume to implement and oversee any LSE Capacity Obligation. In effect, the Commission would be stepping into the role of Risk Management Committee for the market. This level of intrusive regulation is a complete change in the relationship between the Commission and the market. What has set the competitive market in Texas apart from all other attempts in other jurisdictions has been allowing

---

<sup>3</sup> Ibid, at page 17

<sup>4</sup> It should perhaps be noted explicitly the ERCOT market is already dominated by bilateral contractual relationships as it exists today.

<sup>5</sup> See again the quote referenced in footnote 2 above: REPs will fail to procure sufficient resources if they simply are not available in the market, and only a few have the market power to affect that individually.

the market to largely regulate itself within the confines of clearly defined, stable, and actively enforced market rules. No other competitive market in the U.S. can boast the level of complete participation achieved in Texas. The proposed LSE Capacity Obligation would dramatically and negatively alter this balance.

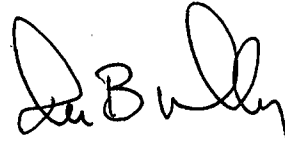
Despite the name applied, the proposed “LSE Reliability Obligation” is a Capacity Charge. This constitutes a fundamental shift to a market design that has been discussed and considered ad nauseum and consistently rejected by the Legislature. To fast-track implementation of such a sweeping change without evaluating the impact of changes already undertaken, and exhaustive consideration, ignores the myriad of unintended consequences that will inevitably ensue, not the least of which will be the unwinding of the contractual and financial arrangements in place between retailers and their investment-grade energy suppliers. It will be very difficult to administer fairly, and even the authors of the E3 Whitepaper allow that it will require special market monitoring effort to “mitigate market manipulation.”<sup>6</sup> It is akin to prescribing decapitation to cure a headache. The problem may be resolved but at what cost?

The ERCOT market needs innovation to address the changing operational realities arising from our evolving generation mix. OhmConnect Texas offers one such solution through the integration of residential demand response as a key component of its retail offering. There will be others eager to enter the market bringing new solutions to the changing grid dynamics, but only if the entrepreneurial nature of the market is allowed to persist. The LSE Capacity Obligation is bad policy in reaction to a Black Swan event. It will have a chilling effect on competition and the development of much needed technological change. If enacted, it will ultimately transform the most robust retail market in the U.S. into a stayed oligopoly dominated by historic incumbents. That is not the future contemplated by Senate Bill 7 nor the future the state of Texas deserves.

---

<sup>6</sup> Ibid, at page 30

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Don B. Whaley". The signature is fluid and cursive, with the first name "Don" and last name "Whaley" clearly distinguishable.

Don B. Whaley  
President, OhmConnect Texas LLC  
2100 West Loop South, Suite 900  
Houston, Texas 77027  
713-202-3834  
[don@ohmconnect.com](mailto:don@ohmconnect.com)

P.O. Box 920919  
Houston, Texas 77018

## **Executive Summary of the Comments of OhmConnect Texas LLC:**

OhmConnect, is ramping up its operation as a new retail electric provider in ERCOT, with a focus on customer engagement and demand response. Mr. Whaley is a seasoned business executive with over 35 years in the energy industry, the last 20 largely dedicated to the competitive Texas market. He has started and led wholesale gas and power trading businesses in the US and launched and served as President for Direct Energy's Texas operations. He will be present and available to discuss his comments and experience with the commission on November 4.

OhmConnect considers the imposition of a mandatory LSE Capacity Obligation an over-response to what was admittedly a disastrous Black Swan event, one which promises many unintended and unwelcome consequences. The commission has already taken the necessary steps to drive weatherization of generation and spur necessary gas-electric coordination; ERCOT has undertaken a more conservative approach to acquisition of ancillary services. OhmConnect would rather support a further ORDC Elongation to send price signals, well in advance of approaching scarcity, of a sufficient scale to drive the load response. Expanding and enabling demand response is the only responsible short-term alternative remaining to the commission. More sweeping and radical changes such as the proposals for an LSE Capacity Obligation should not be entertained without a great deal more time for analysis by the commission and parties.

OhmConnect notes REPs that fail to secure acceptable power resources will have to pay a penalty; penalties will fund ERCOT's purchase of the marginal resources required, which is ironic, given the most efficient system would be to have ERCOT procure needed marginal resources for all retailers in the first place.

Finally, OhmConnect notes that the proposed LSE Capacity Obligation would have the PUCT operate as the ERCOT Risk Management Committee for the market. Currently, accredited suppliers impose significant financial, hedging and risk-related contractual obligations on the

operation of an independent REP. While the imposition of a mandatory obligation for physical right to specific generation resources may sound, in theory, to be a solution for ERCOT reliability, it would lead to the unwinding of these market mechanisms, designed to obtain the same result by experienced market participants, and it is not clear how it would actually affect the sought-after result.